

REMARKS

Claims 1 and 25-35 are pending and stand rejected in the above-referenced office action. No claims are amended, added or canceled. Applicant respectfully traverses the rejections and requests a withdrawal of all rejections as set forth below.

Claims 1 and 25-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (U.S. 5,213,098) in view of Alferness (U.S. 5,531,768). Claim 1 recites “delivering the ESS therapy using a second ESS rate different from the first ESS rate subsequent to the detecting of the detected myocardial ischemia condition.” Bennett generally describes controlling PESP based on a cardiac stress index (CSI) and a cardiac performance index (CPI). A CSI sensor, preferably an oxygen sensor, monitors the stress placed on the cardiac muscle so that PESP can be reduced if needed to balance cardiac performance and stress. Accordingly, Bennett generally teaches adjusting PESP so as not to place too high demand on the cardiac muscle to cause cardiac stress. Bennett fails to teach, suggest, or imply detecting ischemia and adjusting PESP in response to ischemia.

Cardiac ischemia (low blood supply) can be present even when the demand placed on the heart is not causing cardiac stress. Likewise, the demand placed on the heart may be so high that the cardiac muscle becomes stressed regardless how high the blood supply. As such, detecting ischemia and changing the ESS rate subsequent to detecting the ischemia is not taught, suggested or implied by the Bennett reference. While Alferness teaches ischemia detection, Alferness does not teach or suggest delivering the ESS therapy using a second ESS rate different from the first ESS rate subsequent to the detecting of the detected myocardial ischemia condition, as set forth in independent claims 1 and 30 of the application.

None of the referenced prior art documents, alone or in combination, teach or suggest this feature. Therefore, for at least this reason, independent

claims 1 and 30 are patentably distinguishable from Bennett and Alferness. Claims 25-29, and 31-35 depend directly or indirectly from either independent claims 1 or 30 discussed above, and are submitted as being patentable for the reasons that claims 1 and 30 are believed to be patentable as well as for the reason that these claims further distinguish over the referenced prior art documents.

Accordingly, withdrawal of the rejections is respectfully requested.

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

Date: December 22, 2008

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